

Approved as Submitted: June 18, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JUNE 4, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers and Mayor/Chairperson Kennedy.
Absent: Council/Agency Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.

EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name/Number: Santa Teresa Citizen Action Group et al. v. Bay Area Air Quality Management District
(Court of Appeals, First District, A102518).

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation
Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Legal Authority: Government Code 54956.9(a)
Case Name: San Jose Christian College v. City of Morgan Hill
Case Number: Ninth Circuit Court of Appeal, No. 02-15693

4.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/ Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/ Agency Counsel Leichter announced that the closed session items were continued to the conclusion of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairperson Kennedy, Marlon Spenser, Leadership Morgan Hill 2003 Class, let the Pledge of Allegiance.

RECOGNITIONS

Lieutenant Booten indicated that Officers Gary Cupps and Max Cervantes put a lot of time and effort into mentoring the Police Department's Explorer Post, giving them exposure and experience in the law enforcement field. She said that the group participated in the Explorer Challenge 2002 in Sacramento, competing against approximately 370 youths across the state. She indicated that the Morgan Hill team brought home a 2nd place trophy in "Female Physical Agility." Also recognized were Officer Stacy Thornburg, Sergeant Mark Brazeal, and Sergeant Dave Meyers who provided time and expertise in helping the Explorer Post train for this event.

Mayor Kennedy presented Certificates of Recognition to the Morgan Hill Police Department Explorers Nathan Mazon, Alfredo Carrasco, Ryan Halla, Gabriel Sedberry, and Tamara Cupps; and their Advisors Officer Gary Cupps, Officer Max Cervantez; and Officer Stacey Thornburg for their participation in the Statewide Explorer competition for 2003.

CITY COUNCIL REPORT

Mayor Kennedy recognized all individuals who worked on the fundraising event for the Morgan Hill Community Health Foundation. He stated that a very successful fundraising event was held last Saturday and that over \$85,000 was raised. He presented an assimilated check in the amount of \$70,000 in matching funds to Foundation Board Members Bill Brown, President, Glenda Garcia, and Joe Mueller as well as Marylyn Leibers. He indicated that the purpose of the fundraising event is to provide funding to assist in the restoration of medical services in Morgan Hill (e.g., primary care physicians and an urgent care facility).

COUNCIL SUBCOMMITTEE REPORT

No Council subcommittee reports were presented this evening.

CITY MANAGER REPORT

City Manager Tewes indicated that for several weeks, the Council has discussed whether or not to participate, facilitate, and/or fund experimentation relating to the impact of using domestic water provided by the City of Morgan Hill on backyard gardening. He stated that the Council has directed him to contact various relevant agencies who have responsibilities in this area. He said that he has spoken with the agricultural commissioner and recently spoke with the Regional EPA Perchlorate Coordinator. These individuals have given him their analysis and suggestions on this approach. He stated that he would be preparing a report for the Mayor and Council outlining their concerns and suggestions on how the City might proceed.

CITY ATTORNEY REPORT

City Attorney Leichter did not have a City Attorney's report to present this evening.

OTHER REPORTS

No other reports were presented.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not appearing on the agenda.

Cindy Gobin, 575 Bonnie View Court, was happy to hear that something was being done regarding a possible test garden. It was her hope that this process does not take too long as it is almost summer.

Anita Zupan, resident of Hidden Meadow Townhomes, informed the Council that the area residents have several concerns about the Albertson Shopping Center at East Dunne and Monterey Road.

She noted that the sign is broken and that shops are closing. She expressed concern with the appearance of the center as it is not an image for Morgan Hill. She inquired as to the action the City is taking to revitalize the shopping center. She said that when stores close, they invite activities that are not good or positive for the area.

City Manager Tewes said that several months ago, the Redevelopment Agency Board launched a study. The City hired consultants to help the City come up with a revitalization plan for the center. He indicated that the results are expected within 30 days or so. He indicated that staff would make sure that Ms. Zupan and her neighbors are informed about the study.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that item 4 and Council Member Sellers requested that item 6 be removed from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, Approved Consent Calendar Items 1-3, 5 and 7-14, as follows:*

1. EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES

Action: Authorized *the City Manager to Execute a Contract in the Amount of \$60,000 for Contract Planning Services. Approval of the Contract Extension is Contingent on City Council Approval of the Planning Division's Fiscal Year 2003-2004 Budget, as Recommended for Contract Labor Services.*

2. AMEND AGREEMENT WITH THE STROMBOTNE LAW FIRM

Action: Authorized *the City Manager to Execute an Amendment to Agreement with the Strombotne Law Firm.*

3. SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF DOWNEY, BRAND, SEYMOUR AND ROHWER, LLP

Action: Authorized *the City Manager to Execute a Second Amendment to Agreement with the Law Firm of Downey, Brand, Seymour & Rohwer, LLP.*

5. APPROVAL OF PURCHASE ORDER FOR SYSTEMS FURNITURE REORGANIZATION – PUBLIC WORKS OFFICE EXPANSION PROJECT

Action: Authorized *the City Manager to Execute a Purchase Order with Office Products and Interiors (OPI) in the Amount of \$67,024.35 for the Reorganization of Systems Furniture and Partitions at the Public Works Administrative Offices.*

7. **ACCEPTANCE OF SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE I 2002-2003 PROJECT**
*Action: 1) **Accepted** as Complete the Sidewalk, Curb & Gutter Removal and Replacement, Phase I 2002-2003 Project in the Final Amount of \$36,292; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
8. **AWARD OF CONTRACT FOR SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE II 2002-2003 PROJECT**
*Action: 1) **Awarded** Contract to Monterey Peninsula Engineering, Inc. for the Construction of the Sidewalk, Curb and Gutter Removal and Replacement 2002-2003 Phase II Project in the Amount of \$58,000; and 2) **Authorized** Expenditure of Construction Contingency Funds Not to Exceed \$5,800.*
9. **COUNTYWIDE AB 939 IMPLEMENTATION FEE AGREEMENT**
*Action: **Directed** Staff to Execute Agreement with the County of Santa Clara.*
10. **RESOLUTION AMENDING CITY'S CONFLICT OF INTEREST CODE REPORTING CATEGORIES**
*Action: **Adopted** Resolution No. 5761, Amending the List of Positions Subject to the City's Conflict of Interest Code.*
11. **ADOPT ORDINANCE NO. 1620, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1620, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A DEVELOPMENT PLAN AND DEVELOPMENT GUIDELINES FOR A 3 LOT COMMERCIAL DEVELOPMENT ON A 3.88-ACRE PLANNED UNIT DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE BETWEEN CONDIT ROAD AND MURPHY AVENUE (APNS 728-17-16, 17 & 23).*
12. **SPECIAL CITY COUNCIL MEETING MINUTES FOR MAY 21, 2003, CLOSED SESSION ITEM - AUDUBON SOCIETY**
*Action: **Approved** the Minutes as written.*
13. **SPECIAL CITY COUNCIL MEETING MINUTES FOR MAY 21, 2003, CLOSED SESSION ITEM - EMPLOYEE PERFORMANCE EVALUATION**
*Action: **Approved** the Minutes as written.*
14. **SPECIAL CITY COUNCIL MEETING MINUTES FOR MAY 23, 2003, CLOSED SESSION**
*Action: **Approved** the Minutes as written.*

4. APPROVAL OF LEASE OF PERCHLORATE REMOVAL PLANT TO BE INSTALLED AT THE TENNANT WELL SITE

Mayor Kennedy indicated that he would like to defer this item to later in the meeting. He stated that the Council needs to discuss some legal matters in closed session.

6. REJECTION OF BIDS FOR CONSTRUCTION OF THE MONTEREY ROAD/UNION PACIFIC RAILROAD (UPRR) UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT

Council Member Sellers noted that the recommendation for this item is to reject the bids for the construction of the under crossing on Monterey Road. He said that it was interesting to see that the low bid was 31% above the engineering cost estimate. He felt that the amount to be excessive and wanted to know how the engineer's cost estimate was this far off, particularly in today's environment.

Director of Public Works Ashcraft said that a lot of northern California construction bids are coming in higher than expected in this declining economy. He said that contractors are hungry for work, as can be seen by the number of bids received, but that all bids were substantially high. He could not explain why other bids in the area came in high. He said that after the bids were opened, staff called several of the contractors. The contractors confirmed that the particular type of facing on the concrete retaining wall was spect as being one of the most expensive materials. He felt that this material added \$30,000 to the cost. He said that the \$30,000 can be eliminated by having essentially the same look to the face of the concrete using a different type of material. Staff is recommending that the Council reject the bids and that staff will revise the plans and specs, specifying a different type of material for the facing as well as doing a couple of other things that would get the project back within budget. He noted that the lowest bid was 30% higher than the engineering cost estimate. He indicated that this was a unique project and that more than half of it in retaining wall. He stated that staff will be rebidding this project as early as next week, with Council awarding the bid on July 15 and that construction would start by August 2003.

Council Member Sellers stated that he was anxious to get this project underway. If the bid was this far off, it would make sense to reject the bid. He requested that staff try to figure out a way to avoid bids being this far off in the future.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Rejected** the Bids Received on April 22, 2003 for the Construction of the Monterey Road/UPRR Undercrossing Pedestrian and Bikeway Improvement Project.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Carr, the Council/Agency, on a 4-0 vote with Council/Agency Member Tate Absent, Approved Consent Calendar Items 15 and 16, as follows:*

15. JOINT REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR MAY 21, 2003

Action: Approved the Minutes as written.

16. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR MAY 23, 2003

Action: Approved the Minutes as written.

Mayor Kennedy indicated that there has been a request to move up Item 20 at this time. He recommended that the Council consider this item before the public hearing items.

OTHER BUSINESS:

20. REQUEST TO ADOPT THE CIVIC CENTER PARK BY THE LEADERSHIP MORGAN HILL 2003 CLASS

Mayor Pro Tempore Chang indicated that she would be stepping down from discussion of this item as she is a member of the Leadership Morgan Hill 2003 Class.

Mayor Kennedy invited the Leadership Morgan Hill 2003 Class to make their presentation.

Marlon Spenser presented a power point presentation and requested that the Council approve the Leadership Class request to adopt, renovate and beautify the park area between the Library and City Hall. The power point presentation detailed a budget, fundraising campaign, beautification proposal, and timeline that shows that the project would be completed by September 2003.

Mayor Kennedy stated that it has been suggested that a plaque or a memorial for community leaders, such as Ken Tugos, be incorporated within the project as this would allow deceased leaders of the community to be recognized/acknowledged. This could be in a form of a perpetual plaque. He inquired whether it would be feasible to include this as part of the Leadership's class project.

Mr. Spencer responded that it was his belief that a memorial plaque could be incorporated in the "Leadership Park" project.

Council Member Sellers said that he had the opportunity to meet with a couple of the Leadership Class members at a community event. One of the things discussed was making sure that the good work to be undertaken by the Leadership Class is not undone by future plans that include a new library on the adjacent site. He wanted to make sure that the Leadership Class had the opportunity to review the Library plans and coordinate this project with that of the Library project. He noted that it was indicated that funding for the project has been identified and inquired whether the Leadership Class anticipates requesting any public funds in the future as it sounds as though this project is self sufficient.

Mr. Spencer informed the Council that the Leadership Class has implemented a “Buck an Inch” fundraising program. If it comes to the point where the Leadership Class may require additional funding, the Class will strategize the need at that time. He indicated that the Leadership Class may return to the Council at a later date to request Council assistance with funding for the project. He stated that by undertaking this project, the Leadership Class knew in advance that the City would be receiving funds based on a State Library Grant program. The Leadership Class understands that the project may be impacted by the new Library project and have agreed to incorporate portions of the park elements within the new design of the Library, keeping a portion of the Leadership Park a part of the new library scheme.

No further comments were offered.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-0- vote with Mayor Pro Tempore Chang abstaining and Council Member Tate absent, **Approved** the Request from Leadership Morgan Hill 2003 Class to Adopt the Civic Center Park as the “Leadership Park” Project.*

City Council Action

PUBLIC HEARINGS:

17. DEVELOPMENT AGREEMENT – DA-03-03: HALE-GARCIA

Director of Community Development Bischoff presented the staff report, noting that the report suggests that the application be continued to August 20, 2003. Since the report was written, staff has figured out a way to expedite the Measure P appeal process. Therefore, staff recommends that this item be continued to July 16, 2003.

Council Member Sellers felt that the Council had provided direction to the Planning Commission. He inquired whether the applications would return to the Council.

Mr. Bischoff responded that the only circumstances under which the appeals would not return to the Council is if in going to the Planning Commission, the Commission altered its decision to the

point that the appellant no longer requests an appeal. Otherwise, it would return to the Council for further review.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 with Council Member Tate absent, **Continued** the public hearing to July 16, 2003.*

18. 2003 HAZARDOUS BRUSH PROGRAM COMMENCEMENT REPORT AND PUBLIC HEARING

Assistant to the City Manager Dile presented the staff report.

Council Member Carr noted that the brush list appears to be significantly shorter than the ones previously seen.

Assistant to the City Manager Dile indicated that this list is a brush list of properties that have identifiable problems. The final report to the Council will have the combined lists for brush and hazardous weed abatement and will be a much longer list.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Accepted** 2003 Hazardous Brush Program Commencement Report.*

19. ZONING AMENDMENT APPLICATION, ZAA-98-16: CONDIR-HORIZON LAND (THE FORD STORE)

Mayor Kennedy stated that in the interest of expediency and due to the number of members in the community in attendance to address this item, he requested that speaker cards be shared or that citizens appoint a designated spokesperson who would be given a little more time to address the issue in order to keep the process moving.

Planning Manager Rowe presented the staff report and identified the proposed amendments to the PUD. He referred the Council to item 65 (page 189) of the PUD Guidelines that prohibits dead end drive aisles. He stated that this needs to be stricken from item 65. He addressed the issues discussed and mitigation measures proposed to mitigate the concerns expressed by the Planning Commission at the May 13 and May 27 meetings [e.g., potential for lighting glare (photometric study to be conducted to minimize lighting on site and night time glaring effects typical for auto dealerships. Study to be undertaken by the City to make sure that an impartial analysis is

conducted); noise from the public address systems (no public address system will be allowed); hazardous materials associated with storage/use with automotive repair activities (city codes and fire requirements address public containment and storage of any materials to ensure that there would be no impacts associated with them); truck deliveries of vehicles during times that would compete with peak times for commute traffic (deliveries to be limited to the hours between 9 a.m. and 4 p.m.; loading and unloading to occur on site); 15 gallon sized shrubs to be introduced in the initial landscape plan in areas along the freeway and the Condit Road frontage to provide an immediate screening affect]. He indicated that public comment letters received between the time the agenda was sent out and this evening's meeting have been distributed to the Council and can be found on the dias. Staff recommended approval of a mitigated negative declaration and introduction of the zoning ordinance to amend the PUD.

Council Member Sellers inquired as to the initial height of the large, 15-gallon specimen shrubs.

Mr. Rowe indicated that he could not identify the height difference between a 5-gallon and a 15-gallon shrub. He said that the City has not imposed a requirement in the past for shrubs to be initially 15-gallons. He said that the Planning Commission left the landscape details open for the Architectural Review Board (ARB) to carry out as they have a landscape architect on the Board.

Council Member Sellers inquired as to the mitigation measure(s) for lighting.

Mr. Rowe said that the mitigation would ensure that lighting is providing only where necessary. He noted that the freeway portion of the site is devoted to new car sales, opposite from the residential area. He said that appropriate lighting would be required and that on the Condit Road side, the lighting could be less intrusive and more immediate so that there are fewer impacts to the adjacent residential project/neighbors to the east.

Mayor Kennedy referred to the bottom of page 167 that talks about the applicant's proposed changes. He inquired whether the changes were made after the proposed PUD amendments went through the Planning Commission and ARB.

Mr. Rowe responded that the changes before the Council were presented to the Planning Commission. He said that some of the changes presented to the Planning Commission were as a result of the items having gone before the ARB under preliminary review. He said that four of the changes before the Council were as a result of recommendations by the Planning Commission and three were as a result of the recommendations from the ARB. He stated that the balance of the amendments were recommended by the applicant to achieve some of the design and project objectives. In response to Council Member Carr's question, he indicated that customer and employee parking are proposed to be retained entirely on site.

Mayor Pro Tempore Chang referred to Section 11 pertaining to landscaping. She noted that the original PUD talks about all the landscape areas having a minimum width of 10 feet. She inquired why it is being recommended that this width be changed.

Mr. Rowe responded that the amendment to the landscape requirements comes from the applicant. He said that the 10-foot landscaping requirement is to ensure that the hard surface/paved areas are contained in landscaping to provide shading in the parking lot areas. He said that most of the parking on site is not intended for customer parking. Finger island planters are proposed in the customer parking areas. However, the areas devoted to non customer related activities are more of an open parking area. He noted that the requested exception is not less than the landscape width standard outside of PUDs which is a 5 foot interior dimension. The applicant has requested the exception to provide for the maximum utility of the site and to minimize the areas that would have trees over new cars (sales display area versus customer parking areas). He noted that the City made this similar type of exceptions with the Chevrolet dealership.

Mayor Pro Tempore Chang inquired as to the guidelines requiring landscape screening to be maintained.

Mr. Rowe stated that each PUD has a precise plan that defines the uses and also have adopted guidelines that spells out the specifics of the site. He said that the Council could include in the PUD guidelines the maintenance of a certain landscape height to provide for an effective screening. The Council could include in the guidelines that crown pruning of the trees would not be permitted and that the user needs to allow for the canopy of trees to extend as they otherwise would. If incorporated into the landscape requirements of the PUD, it would be enforceable.

Mayor Kennedy indicated that he has 22 speaker cards. Because there were so many individuals wishing to address this item, he would limit the time to 2 minutes per speaker. He stated that Bruce Tichinin has spoken to him earlier about the possibility of speaking for several individuals.

Mayor Kennedy opened the public hearing.

Bruce Tichinin submitted a letter to the Council and incorporated his remarks by reference to the letter. He indicated that he is the attorney representing Bob Lynch Ford, Lincoln, and Mercury in Gilroy. His services have been retained by Scott Lynch not because they want to deprive the applicant of a profit but because he fears that the market for which they will both draw from is not large enough to support two dealerships. One of the dealership will go dark and will be locked in a struggle for survival should the Council approve this proposal. He emphasized the fact that exceptions have been granted where they were not justified under the requirements of the City's ordinance for other PUDs, and that this was not an adequate grounds to justify an exception in this case. He did not believe that violations of the ordinance establish a legitimate precedent for further violations to the ordinances. The fact that certain exceptions would be consistent with the way businesses are done by dealerships are not grounds for granting variances as cited in the case contained in his letter to the Council. These should be approached legally by creating amendments to the city-wide PUD ordinance for this type of use. In terms of the feasibility of the "no driving on local roads" mitigation measure, he referred the Council to exhibit 3, a rendering of the Walgreen's store that he helped get approved by the Council some time ago. The Council was clear on how it

wanted the store to look. However, if you take a look at the Walgreen's building/site, it does not look anything like the rendering approved by the Council. It was his belief that the City's mitigation measure that prohibits driving in local residential areas will be unenforceable. For this reason, he felt that there was evidence that this adverse impact on the environment will continue for this project. Therefore, the Council should prepare an environmental impact report (EIR) as he felt that the mitigated Negative Declaration was insufficient. He felt that the proposal suggests that the City should sacrifice the long term quality of life for the short term realization of tax revenues. He did not believe that this was a good policy. It was his hope that the Council would not be swayed by staff support for this proposal.

Scott Lynch, president of Bob Lynch Ford, Lincoln, Mercury in Gilroy, stated that having served as the president of the Gilroy Chamber of Commerce and as a financial partner to the Gilroy Economic Development Corporation, he understands the need for economic vitality within a community and the benefits that it can afford to its citizens. He applauded Morgan Hill and Gilroy for its aggressive, yet thoughtful pursuit of businesses that mesh well with the vision that the City leaders have had for the communities. He said that it is with this that he cautions the Council. He expressed concern about direct competition from another Ford dealership because he did not believe that the two communities could support two Ford dealerships' profitability. As a board member and president of the South Valley Hospital Foundation, he observed the difficulties that the Hospital had in providing health care in a non profit environment. He has heard rumors of the difficulties that Morgan Hill's St. Louise Hospital experienced. He noted that today, one of these two facilities remains vacant. He acknowledged that there were two Chevrolet dealerships between the two communities. However, South County Chevrolet focuses on car and truck sales, while Marx Chevrolet focuses on commercial truck sales. This niche strategy is not possible for either Bob Lynch Ford or the proposed Ford dealership in Morgan Hill. He did not believe that the short term benefits of the sales tax revenues would outweigh the negative impacts to the neighbors or the risk of failure. With regards to the application before the Council, he felt that too much emphasis is being placed on highway visibility as a requirement for success. He noted that the applicant has selected a highway adjacent location and is requesting exceptions to the PUD that enhances their visibility. He suggested that such an exception is not necessary to ensure their success. He noted that his auto dealership has not enjoyed highway visibility. As someone who is proud of the community that he serves, he encouraged the Council to consider a different strategy for Morgan Hill, one that compliments the demographics of the community and better matches the buying patterns of the Council's constituents. He further suggested that the Council continue its quest for auto dealerships and focus on bringing in franchises that compliment what is already in Gilroy. These franchises should be located in a campus like setting that is harmonious with the atmosphere that is already established in Morgan Hill, away from residential areas of the City. He submitted his written statement as part of the official record.

Karen Bainbridge, 1515 Kelley Park Circle, did not believe that the Ford Store belongs in the Condit PUD. She felt that the City has been working to meet the needs of Morgan Hill as well as the Ford dealership. However, there were too many gaps. The PUD amendments declare that test drives cannot be conducted on Murphy Avenue. She indicated that there was nothing that would

explain how this would be enforced or the penalty for not complying. The amendment declares that the Ford dealership cannot use loud speakers. However, the lighting requirements are much less restricted than the normal PUD requirements. She noted that the Ford dealership requires many exceptions to the PUD requirements. Therefore, it is not a good fit for the intended use of the land. The Highway Commercial zoning includes the use of automobile sales and service. She did not believe that the City should bend the rules for the Ford dealership and that the Ford dealership should be made to comply with the PUD requirements. She understood that the City is strapped under these economic times. She requested that the Council not think short term and reject the zoning amendment application. She referred to Chapter 18.26.040c Highway Commercial that states all uses, whether permitted or conditional, shall be conducted in such a manner so as to avoid any nuisance, hazard or offensive conditions or characteristics.

Bob Burkhardt, 1375 James Court, indicated that he attended the Planning Commission meeting and discussed the mitigation plans for noise, noting that it is already too high in the area. He felt that the mitigation plan for traffic through the neighbourhood is to have the community police this activity. It was also indicated that the dealer would use the freeway. He has found that this is not the case where dealerships are located in residential areas. He noted that the City has not decided what will be happening with Murphy Avenue and Condit Road. He felt that the only mitigation measure that can be applied to traffic is to do something similar to what was done at Campbell. The City could leave Murphy as a two lane road and install speed bumps, traffic circles or other traffic mitigation measures similar to what was done in Campbell. He said that with 19 businesses going into a two block area, including a swim center with a negative \$1 million cash flow each year, are not the uses that were planned for Morgan Hill. Approval of the PUD amendment would allow 7 exceptions. He requested that the City perform a cumulative impact report for all 19 businesses that are occurring in a two block area between Murphy and Condit, adjacent to Dunne Avenue, in order to understand what will be happening with a 14 unit strip mall, the Harley Davidson, the miniature golf and all other businesses to be located in a one small area.

Nilou Tarani, 1585 Kelley Circle, yielded her time to Mark Lawson

Michael Lawson, 1385 Kelly Circle, requested clarification as to the reason there were seven exceptions last week before the Planning Commission and only six exceptions this week. He stated that he attended the Planning Commission meeting in order to have them understand the residents' points of view in terms of safety with the schools, residential, and park areas. Residents are concerned about the test drives and the users being unfamiliar with the vehicles that are being test driven and possible driver error. He said that it is not enforceable or legal to prohibit use of residential streets to test drive vehicles as the roads belong to the public. He indicated that Mr. Toy was quoted as stating that it would be great if there were three or four more car dealerships. If approved, they would more than likely be sited in the Condit Road area as auto dealerships like to locate together. He requested that the Council take into account the cumulative affect of 5 dealerships to the local residents as they relate to noise, chemical and light pollution. He requested that another site review hearing be held. He stated that he measured a distance of .2 miles south of Cochrane on St. Louise Drive to a flat area that can accommodate an auto row that would not

impact residents and would suffice the visibility requirements that car dealerships want. The Cochrane/St. Louise area would allow businesses to compliment other businesses and not impact residential areas. The residents agree that the Planning Commission's job is to serve the City's best interest but that it is also their duty to serve the residents' interest as well. He did not believe that the Planning Commission has fulfilled the second part. He requested that the Council not approve the requested PUD amendment.

Sam Huerto, 1575 Kelley Road, also yielded his time to Mr. Lawson

Sharon Miller, 1205 Kelly Park Circle, stated that she grew up in Morgan Hill, went off to college and returned to purchase a home in Morgan Hill. She said that when she bought her home in Kelly Park, she was careful in looking into the zoning before she purchased her home. She understood that the lot across the street from her was zoned residential. She was concerned about the freeway noise, indicating that this was a very difficult purchase to make in terms of noise. She stated that she finds the possible rezoning disturbing. She expressed concern about the safety of the neighbourhood and traffic on Murphy Avenue. She requested that the Council take a look at the safety of the neighborhood.

Marby Lee, 960 Oak Park Drive, felt that the auto dealership was wrong for Morgan Hill. She requested that the Council put all its efforts into bringing businesses that are needed into town that residents would patronize instead of a car dealership. She stated that individuals that she knows drive to San Jose and beyond to do their shopping. She requested that the Council not disregard the safety issues raised and the other reasons why this use is wrong for Morgan Hill.

Mayor Kennedy indicated that there was a question raised about limiting public comment. He requested that the City Attorney respond to the question.

City Manager Leichter said that Sherry Purser requested that the City explain how the law allows a governmental body to hold a public hearing and not allow time for everyone who wishes to speak about the topic. It was asked whether the City could limit the number of public comments. She responded that the law generally requires that a public hearing be held and that individuals be allowed to speak. The law also allows the public agency to set rules on the public hearing so that the hearings do not extend over the course of time. Some agencies have a one minute rule. Morgan Hill is fairly lenient in the amount of time the public is allowed to speak, indicating that it has been a long time since the City has had a large number in attendance. The law allows agencies to request that citizens not duplicate responses.

Sherry Purser stated that she felt that a public hearing was for the purpose of listening to all public comments. She said that she has never heard of a city limiting a public hearing to a certain number of individuals.

City Attorney Leichter clarified that the Mayor did not limit the number of comments. He specifically requested speaker cards be submitted so that the Council can get an idea as to the time necessary to conduct the public hearing.

Mayor Kennedy indicated that on the onset of the public hearing for this item, he requested that individuals combine comments in the interest of saving time. He did not state that anyone would be denied the opportunity to speak. He stated that he gave the public plenty of time to submit speaker cards and that he stopped accepting speaker cards after a certain point as this would open the door to continuous rebuttals.

Mayor Pro Tempore Chang recommended that individuals be allowed to submit speaker cards at this time.

Council Member Sellers said that it appears as though there may have been several individuals who were not in attendance when the submittal of speaker cards were requested. He felt that it might make sense to give those individuals who were not present earlier the opportunity to submit speaker cards at this time.

Mat Fairband, 2015 Blue Bonnet Court, stated that he wants to work with everyone in keeping an open mind. He said that a swim facility or a mini golf park set a certain precedent for what the residential neighborhood wants to see when they drive home. He felt that family-oriented recreational facilities are a far cry from glaring signage and a commercialized appearance of an auto dealership. He likes to drive cars but that he does not care to drive past a Ford dealership on his way home. He understands the importance of running the business of Morgan Hill. He recommended that the City never gets caught up in the finances of business that it forgets why citizens moved to Morgan Hill. He said that residents look toward the Council for careful guidance on the community's growth and that residents pay incredible premiums for a lifestyle that can be attained in a number of other commercialized communities. Morgan Hill has resisted some of the growth that has taken over Gilroy and felt that Morgan Hill is at a crossroad. It was his belief that the Council's decision tonight might affect his family's long term plans where it chooses to live.

William Williams, 1395 Kelly Park Circle, stated that one of his major concerns is that of traffic accidents and the safety of his child and other children attending Nordstrom School. He has seen car racing taking place on Murphy Avenue. He expressed concern with the devaluation of home prices. He stated his opposition to the auto dealership use.

Rose Huerta, 1575 Kelley Park Circle, said that Dunne Avenue is the main thoroughfare through town and the hill and that the City is packing several uses in the area. She noted that Tennant Avenue has not been developed and that Cochrane is being developed as industrial. She stated that the City's noise contour map for the general plan dictates a 65 noise decibels in a residential neighborhood. She noted that Nordstrom Park will be the only park in the City with two, four lane roads along its side. She also noted that soccer games take place in the vicinity and that there are several cars lined up. There are functions at the schools where parents park along Kelly Park and

the street. Now, the City is proposing to install four lanes and have all this extra traffic, possibly injuring a child.

Leigh Lawson, 1380 James Court, a recent Live Oak High School graduate, stated that her friends would test drive cars from the Chevrolet dealership. They did so to see how fast cars can go and drive recklessly. Her family moved to Morgan Hill from south San Jose in order for the children to live in a safe neighborhood. She noted that children walk home everyday from school during peak hours. She did not believe that allowing heavy traffic in this area was appropriate. She stated her opposition to the construction of an auto dealership.

Lisa Canoy, 1475 Kelley Park Circle, stated that she moved to Morgan Hill 8 months ago from the Evergreen area, adjacent to large commercial area that generated a lot of vehicle generation and noise. When her family started looking for a home, she wanted to move to an area that was beautiful, safe, and call home. She does not want to have to move again because it is unsafe. Approval of the use would devalue the property values and would pose a traffic safety problem. When she moved to Morgan Hill, she was told that Morgan Hill was a city that had beautification in mind; a country town that was still close enough to city-wonderful things. By approving a Ford dealership and the other businesses, the Council will just reduce the values of what Morgan Hill is all about and why people move here. She does not want to see the devaluation of people over big bucks.

Debra Chappell, 1355 James Court, indicated that as development occurred her family could no longer see the stars very well as the City keeps building and adding lights in the area. She chose to live in Morgan Hill because she saw it as a baby Los Gatos/Saratoga and that it was her belief that it would continue in this path. When she moved away from the Santa Teresa area to come to Morgan Hill, she was not looking for the same thing nor was she planning to have her home devalued. She stated that she has been before the Council 3 or 4 times requesting that the Council not enlarge the street only to allow teenagers speed on the streets. It does not matter how much screening is required, she does not want to see an auto dealership as this is a residential area. She felt that there were several other locations to locate an auto dealership that are non-residential. She did not understand why the City approved large family homes in this location only to devalue them.

Teresa Lawson, 1385 James Court, read from a prepared statement in opposition to the Ford dealership at Condit and Highway 101. She did not like the thought of living by an auto dealership with light and noise pollution and increased traffic in the area, including test drives through the residential streets. She indicated that the Morgan Hill Times mentions a traffic study that predicts that the dealership would significantly increase traffic at the unsignalized Murphy/East Dunne intersection, bordering an elementary school and City park. She felt that this was a safety issue for families and children. She inquired whether there were more dealerships planned for the area, noting that the Pinnacles mentions that Mr. Toy would like to see 3 or 4 more dealerships in the area. She stated that she did not move to Morgan Hill 13 years ago to live by an auto row. She moved to Morgan Hill for the rural, small town atmosphere. She commutes to San Jose in order to live in this peaceful, quite area. She inquired why she would want to live adjacent to a business

that would produce heavy traffic and noise when she moved to Morgan Hill to escape the traffic and crowds of San Jose. She did not want to live by a sea of cars lining the freeway. She has her doubts that test drives can be stopped in the residential neighborhoods. She expressed concern that there was a lot of discussion about the Applebee's and In and Out Burgers in the gateway to the community and the city's gateway image. Yet, she did not see the same amount of concern regarding the development of businesses in residential areas. She stated that this is a residential neighborhood's quality of life and that residents do not want a car dealership in it.

Charlotta Gigliotti, 16925 Pepper Tree Drive, said that she has lived in Morgan Hill since 1984. She said that Morgan Hill is not the place she used to know and love. She noted that there are many fast food establishments in Morgan Hill and only three exits. She stated that she goes to San Jose to spend money because Morgan Hill does not have the businesses that people want to spend their tax dollars on. She felt that Morgan Hill is losing its image and that it is becoming the junky place to locate a business.

Matt Lawson, 1385 James Court, said that recently, he and his dad recently improved the quality of their home by making improvements to increase the property value. If an auto row is allowed to proceed on Condit, the home value would decline and this would result in doing all of the home improvements for nothing. The equity of the family home would be applied toward his college expenses and inheritance. He recommended that the auto dealership be located in a less populated, commercial area.

Mark Sparacino, 1450 Seville Drive, Sonora Ranch resident, stated that he last appeared before the Council approximately 3 years ago when the Planning Commission decided to change the master plan for the Dunne Avenue/Condit Road area that would align the street with strip malls and hotels. He spoke in opposition at that time to no avail. The economy has since intervened and the City has not been able to build out the hotels. He said that the argument in both cases was that the City has to capture the revenue dollars being lost to Gilroy. If you look at Gilroy, the outlets are concentrated on the northeast side of the freeway and that the new retail outlets and restaurants are going into the southeast side. The auto shops are being congregated in a cul de sac on the west side of the freeway. New homes are being built a distance to the northwest and west of Gilroy. Therefore, there is no impact to residential areas. He felt that the planning process in Morgan Hill seems to be that the property owner is selling parcels of land to the first potential buyer, requesting variances to master plan to make the sales deal go through. This results in a crazy patchwork design that is being seen today. He did not believe that the building compliments other uses in the environment. He requested that the Council look out for the residential areas, protecting the quality of life and keeping neighborhoods quiet and safe for children and residents.

Sherry Purser, 16175 Jackson Oaks Drive, stated that she would like to welcome businesses to Morgan Hill because the City needs the tax revenues in appropriate locations. She felt that this location was inappropriate, noting that soccer fields, an elementary school, and a future swim center are located nearby. Now, the Council is proposing to add individuals to test drive cars to which they are unfamiliar with. She felt that safety is paramount. The Council was elected by the

citizens to take care of planning the community. She indicated that the citizens appreciate all the work that is done by the Council and requested that it look at the safety and the future of the community.

Phillip Symens, 12295 Kelly Park Circle, stated that he has lived in Morgan Hill for over 18 years. He said that the location of the auto mall in Gilroy is different from the location being discussed for this Ford dealership. Individuals can test drive automobiles in Gilroy in a commercial area and in a very safe manner. He said that he and Kelly Park residents have been concerned about traffic on Murphy Avenue. He felt that this use would add to the traffic concern. He likes seeing businesses come into Morgan Hill as it is good for the economy, but that on the other hand, this does not seem like the right place for this type of business.

Bruce Haller, 17610 John Telfer Drive, stated his support of a car dealership as a resident of Morgan Hill for 15 years. He said that the City has had a real problem by saying no to a lot of different companies, businesses and development. He felt that the City was getting to a point where it is running out of choices for tax basis. The City/community will need to come up with some way to support the police, fire, and recreation department. The City needs to find a way to fulfil the needs of city services as well as the needs of the tax payers. He felt that the auto dealership could be a good source of revenue, acknowledging that there are some issues. He noted that the site has been designated commercial for the past 15 years.

Vince Burgos, Development Process Consultants, indicated that he was in attendance representing the Ford dealership. He said that the applicant has put a lot of time into this project, working closely with staff. He stated that he was the architect for the original PUD, assembling five PUDs in the City. He said that these PUDs exist at each gateway into the City and that each has an underlying zoning. This one has an HC, Highway Commercial underlying zoning and that the use confirms to the zoning. He stated that the application has been through preliminary review. He has worked with the ARB and staff, incorporating adjustments as recommended. He has heard comments come back from the Planning Commission, indicating that the project proponents have tried to address these issues. He stated that any PUD in the City would require the recommended changes for a similar dealership use.

John Telfer, 17045 Monterey Road, stated that it was his opinion that there were some broader issues here that benefits the entire community and not just a particular neighborhood. He indicated that he is a fourth generation Morgan Hill resident. He stated that the City has always had a goal of attracting high sales tax generating businesses to Morgan Hill. At the top of the list has been auto uses. The question that keeps being asked is whether this is the right location. He said that this property has been zoned highway commercial for the past 15-20 years. He noted that there is an open field zoned high density residential located between this parcel and Murphy Avenue. In 1997, the City completed a PUD that included all permitted uses in the highway commercial district, noting that an auto use is a permitted use in the existing, approved PUD. He indicated that the City commissioned a study in the fall 2002 to look at different alternative sites in Morgan Hill. He stated that there are logical, good reasons why the alternative sites do not work, noting that this was

chosen as the number one site. He said that auto dealerships, as hotels, are win win situations for cities in that they do not generate a large amount of traffic, especially when you look at the use relative to their sales tax revenue that is brought into the City.

No further comments being offered, the public hearing was closed.

Mr. Rowe referred to page 199 of the agenda packet. He stated that the staff report indicates that the resolution was expanded to include six findings. He said that seven exceptions were originally requested. However, one of the exceptions was eliminated because it was identified that the project complies with the requirements of providing the minimum 15% landscaping in all parking areas. As currently proposed, 19.9% of all parking areas are proposed to be landscaped. As landscaping exceeds the 15%, there was not a need to include this exception, reducing the exceptions from seven to six. He noted that this is a vacant piece of property that abuts against the freeway just at the point where the on ramp inters into travel lanes of Highway 101, immediately to the south is the Holiday Inn Express. Between the site and the residential neighborhood is an intervening area of land between Murphy and Condit that is general planned residential (R-2) occurring between commercial and the residential neighborhood on the east.

Mayor Pro Tempore Chang said that it was her understanding that the Ford dealership had other sites offered to them and that there was a second preference site selected.

Mr. Rowe and City Manager Tewes responded that they have no first hand knowledge of a second alternative site. City Manager Tewes indicated that the Council may need to ask this question of the applicant.

Mayor Pro Tempore Chang indicated that at the last meeting, Mr. Toy indicated that staff offered another site to the Ford dealership. It was her belief that Ford representatives looked at the second site and found it to be an acceptable site as well.

Council Member Carr requested that staff address the lighting issue and how the City can approve the zoning amendment request contingent upon the results of a study.

Mr. Rowe said that the environmental initial study discussed the need to provide shielding of the lighting so that it is directed downward to minimize affects of light or glare. He indicated that the Planning Commission did not believe that this, in itself, would be sufficient. Staff recommended that a photometric study be conducted. The Planning Commission wanted to ensure that the objectives of the study were carried out and recommended that the City conducts the study versus relying on the applicant. He said that one of the things expressed as an objective is that the auto dealership not be lit up like the Chevrolet dealership. It is being recommended that the intensity of lighting be reduced to the greatest extent possible, especially looking toward the westerly portion of the site so that the light intrusion that might happen toward the residents that spoke would not occur, or is kept to a minimum. As this is an auto dealership, there is a need to have adequate lighting to illuminate the vehicles that are to be sold, especially in the winter months. He said that it

would be obvious that there will be an auto dealership in the area. On the other hand, it was the consensus of the Planning Commission that a number of requirements be incorporated in the approval in order to minimize impacts. Staff wanted to learn what it could from the Chevrolet dealership and come up with a lighting plan to reduce lighting further. He indicated that the study would include recommendations on how the lighting plan should be developed and the type of lighting to be used. He noted that there is existing language in the PUD which applies city wide that allows the City to assess the lighting impacts and require changes to the existing lighting scheme to mitigate or reduce lighting impacts, even after approval.

Council Member Carr noted that a lot of testimony was received expressing safety concerns with the test driving of vehicles. He inquired how the City would enforce where test drives are to occur.

Mr. Rowe said that staff contracted with a traffic/engineering consulting firm to perform a complete traffic study for the site. He said that there is a threshold that staff normally applies when it feels that there are enough traffic trips to warrant a traffic study. He said that the industry standards for an auto dealership would generate a maximum of 84 vehicle trips in the p.m. peak hours. Even though the use was less than the threshold required for a traffic study, the City proceeded with a complete traffic study. Regarding the distribution of assignments, he said that the traffic report looked at the percentage of traffic that would be coming to and from the site. As far as traffic to and from the site from Murphy Avenue, the report states that there would be no additional vehicle trips to Murphy Avenue as a result of the use.

Council Member Carr inquired how the City would propose to enforce the limits on test drives.

City Attorney Leichter said that if the enforcement of limiting test drives is adopted as part of the PUD guidelines, then there is an enforcement mechanism in place should the guidelines be violated. The mechanism would be to rescind the notice of approval. In terms of enforcement, this would be a normal police activity for speeding. She said that there is an administrative remedy in terms of the City's ability to rescind the approval(s) if the guidelines are violated.

Mayor Pro Tempore Chang said that she recollected that the Council voted to allow 4-5 auto dealerships to develop in the area. She stated that the City is in the process of trying to annex lands so that the area will be able to develop as an auto dealership. Should the Council decide to move forward with an auto dealership development of 4-5 auto dealerships, she inquired why the City is moving forward with a negative declaration and not conducting an environmental impact report the full 40-acres.

Mr. Rowe responded that the property to the north being referred to by Mayor Pro Tempore Chang is proceeding before LAFCO under the present general plan designation of campus industrial. Any decision to be made at some future date to amend the land use plan to a commercial designation would require an environmental review prior to Council taking action. In which case, the impacts of the decision would have to be evaluated. To look at the environmental impacts in advance of this would be considered speculative even though there has been discussion at the Council level to look

at an area that is general planned and designated as campus industrial. He said that environmental review would occur in due course and prior to any decisions to change the area from an industrial designation.

Mayor Pro Tempore Chang stated that she has reviewed the Council minutes where a council member recommended designating the area for auto dealerships. She requested the opportunity to review a copy of the minutes that contained the discussion of the 4-5 auto dealerships.

Mayor Kennedy inquired whether Mayor Pro Tempore Chang was referring to the Council's discussion of 4-5 different sites for possible auto dealership.

City Manager Tewes noted that exhibit 1 submitted by Mr. Tichinin is the staff report that was presented to the City Council in February 2002. At that time Mr. Tichinin spoke against the auto dealership strategy that the Council adopted. Specifically, the Council indicated that it did not want to pursue an auto mall and that it did not want to pursue an auto row. There was discussion by Council Members about having only a few more car dealership and not a great concentration of them. He indicated that this strategy was adopted in February. He stated that Planning Manager Rowe spoke to the Council about the property to the north, a 20-acre proposed annexation for campus industrial.

Council Member Sellers felt that it was important that the Council is clear that the comments made by Mayor Pro Tempore Chang earlier were inaccurate and that the Council did not discuss an area for auto dealerships.

Council Member Carr said that this is a difficult issue and that it was his hope that information is not being put out that is misleading anyone. It was his hope that everyone stays to the facts and understands the issues. He noted that this property is currently general planned as commercial and that Horizon Land Company submitted an application to establish a PUD zoning in 1997. In 1999, the Council adopted the current PUD zoning to allow mixed commercial uses on the property. He noted that the property to north, up to Diana Avenue, is zoned Office Industrial and that Diana to Main Avenue is zoned industrial.

Mayor Pro Tempore Chang requested the opportunity to review the minutes of the February 2002 meeting.

Mayor Pro Tempore Chang referred to the minutes of the Redevelopment Agency/City Council meeting of February 27, 2002, specifically the motion as follows: On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the Agency Board and the City Council, on a 4-1 vote with Agency/Council Member Chang voting no, as follows: 1) approved the list of potential sites; 2) adopted an auto dealership strategy; and 3) directed staff to implement the strategy. She referred to exhibit 1, the Auto Dealership Strategy (attachment 3) that states as follows: prioritize the three key areas best suited for auto dealers in the following ranking order: 1) Dunne Avenue; 2) Tennant Avenue; and 3) Cochrane Road areas. She noted that number two states that because the

Dunne Avenue area is a primary area for automotive retail, and since a dealership has an offer pending, there was a concentrating effort in attracting this dealership to the Dunne area. She indicated that this was an action adopted by the Council/Agency. She referred the Council to page 2 of the auto dealership strategy. This section states that the City is to work with the property owners of the 19 acre site on Condit Road, mushroom farm and adjacent parcel, to annex these parcels into the city, selecting a PUD zoning; limiting the PUD use to motor vehicle sales. She indicated that everyone moves into Morgan Hill for the quality of life it has to offer and that everyone wants to enjoy the rural atmosphere, noting that the General Plan talks about the rural atmosphere as part of the City's mission statement. When the City talks about economic growth, she felt that it has to be quality economic growth, the type of economic growth that the citizens want to see for Morgan Hill. She felt that K-mart did not survive because it is not a business that Morgan Hill citizens want. The City is now changing its direction and is looking for a buck. She noted that five years ago, the City had an \$8.5 million budget and that it is now at \$16 million. The City has \$10 in reserves and that the reserves will be used to perform some of the activities that the City would like to do.

Mayor Kennedy felt that it was important that the Council has a dialogue on this issue as the City is dealing with an issue that is critical to everyone. He indicated that he resides off of East Dunne and is also concerned about traffic. He is also concerned about the City's budget. Therefore, it is important that the City takes action that will help bring in sales tax revenues to the City. He said that a lot of points have been made and a lot of questions have been raised. He recommended that each Council Member make some remarks this evening. He would then request that this item be continued. He stated that sales tax revenues are important to all cities because property taxes are no longer a reliable option for cities. He felt that the City has to look at businesses that will provide sales tax revenue, noting that auto dealerships is one of those businesses that bring in a lot of revenue to cities. This is why the Council came up with an auto dealership strategy. He indicated that businesses go where their market studies dictate would be the best locations and that it is difficult to force a business to go somewhere where they do not want to go. He said that a study was conducted in the early 1990s where the City proposed an auto mall on the north side of town, north of Cochrane Road. This study was a failure because auto dealers did not want to locate on Cochrane Road. When the Chevrolet Dealership was proposed for Morgan Hill, the City encouraged them to locate near Cochrane Road. They would not do so because the market conditions were not right and the business would not work at that location. The Chevrolet dealership insisted on locating on Dunne Avenue or they would leave the community. He felt that some individuals would say let them leave while others would inquire why the City was not supporting businesses in Morgan Hill, only to locate in Gilroy. He stated that it was the demographics and the market that dictates where businesses will locate. He felt that everyone needs to be cognizant of this fact. He appreciated the residents' concerns and understood the concerns as he drives this stretch of Dunne every day. He was convinced that this Council will want to do what is best for the entire community. The City needs to weigh its needs for police and fire services which are funded heavily by sales tax revenues. The City currently has a minimal police department and that a new contract for fire services is coming up. Although the City has been frugal in protecting its reserves, the City's expenditures are exceeding its revenues.

Therefore, the City needs to find new sources of revenue. He stated that the City has to look very seriously at any potential businesses that will bring revenue to the City and that the City needs to carefully weigh the appropriate location for them. He stated that he would take the time to consider the residents' comments and the input made this evening, recommending further discussion/action being taken at the next Council meeting.

Council Member Carr said that the Council takes citizens' comments to heart and listens to them. He was pleased that Mayor Kennedy was suggesting that action be postponed, requesting that staff look into the issues raised, especially those raised by Mr. Tichinin. He does not try to predict what his colleagues will do nor does he try to predict where he will be on a particular issue, especially when there are questions that need to be answered. The City has a general plan that took three years to adopt, and involved a good amount of the community in developing the general plan map. If a city does not have general plans or planning for the community, the city will work in a crises mode. He felt that it was important to try and follow the adopted plans. This is why it takes the Council a long time to get through issues, at times. He felt that if anything, this Council has been criticized for being a little too slow on some of its actions. He felt that it was important to take time to work through issues. He encouraged individuals who want to learn more about the auto district strategy to read the entire minutes of the meeting to learn about the debate and conversation that took place in February and the issues involved. He requested that citizens understand that simply by adopting something called "an auto district strategy" does not mean that the City has set aside 40-acres for massive number of dealerships. In reading the February 27, 2003 minutes, he felt that it was the intention of the Council that projects be reviewed as they come before the Council as well as the impacts to the community. He supported continuing this item to a future meeting so that the Council can think about this issue in a positive way for the community.

Council Member Sellers said that Council has reviewed uses very deliberately such as the In and Out Burgers. He stated that it is a consistent balance between providing what citizens need and what is desirable. He stated that he has issues that he would like to give consideration to and that he would spend time in the next few days and weeks going through these. Some issues deal with the site and with the specific dealership. He felt that this was a template and opportunity regardless of what happens with this particular site. Wherever this use or future auto dealerships might locate, the City will need to deal with lighting, landscaping, and parking issues. He indicated that he has seen dealerships that have inadequate landscaping that were not planned and signs that were too high. He stated that he did not raise the issue of flag poles and that he gets anxious when individuals use these as an opportunity to attract people to their businesses. He felt that there were quite a few related issues that need to be addressed that cannot be resolved this evening. He felt that the Council works hard, spending time as a group and individually; taking the extra time to work with each other. He felt that it was important that Council Member Tate be in attendance at the next meeting because he is a valuable member of this group and that he was anxious to hear his thoughts on this application. He agreed that Council members have their differences and disagreements. However, the Council works hard to ensure mutual respect and that this should be continued regardless on how the Council votes on this or any other issue.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, continued this item to June 18, 2003.*

City Council Action

OTHER BUSINESS:

21. AWARD PHASE 1 OF CONSTRUCTION CONTRACT FOR POOL PACKAGE – MORGAN HILL AQUATICS COMPLEX

Director of Public Works Ashcraft presented the staff report, indicating that an amended staff report was distributed this evening. He indicated that Glenn Ritter, project construction manager, and the representative from Nova Construction were in attendance to answer any questions that the Council may have. Also, the Council subcommittee may wish to voice their support of the recommended action.

Mayor Kennedy said that the Council has been using the term phase I for a lot of different purposes. He stated that at one time, phase I of the project was a distinct portion of the site that had two or three pools. Phase II was going to be a deep water diving pool. The term phase I, as used here, applies to a portion of this contract to perform shop drawings. This is a small piece of work that is estimated at \$68,000. This allows the project to continue on schedule. The next major contract will be for \$5.5 million. He felt that there is an opportunity, during this phase, for bids to come in. It is the City's hope that bids will come in below estimate and allow the City to get on track as far as the budget is concerned. It is the Council's hope that there will be more competition and the City will be able to get more aggressive bids. He stated that the City will include, in this portion of the contract, numerous alternative bid alternates. If for some reason the bids exceed the estimates, the Council will have the opportunity to cut portions of the project.

Council Member Carr noted that the action before the Council is to be able to get the shop drawings completed in order to keep the project on schedule with a minimal financial risk to the City. The Council subcommittee has asked that all of the bid alternates that the Mayor referred to be included in the shop drawings. This would allow the City to pull the bid alternates to save dollars if necessary. If the bid alternates are not included in the shop drawings at this time, the City will not have the opportunity to include them later. He felt that these were important to the economic development of the pool. He encouraged the Council to support the action this evening.

Mayor Kennedy opened the item to public comment.

Bob Burkhardt stated that he likes the idea of a swim center as his children were competitive swimmers for almost ten years. While the PUD has been reviewed in total, each individual project is reviewed and approved separately. At the last Planning Commission meeting, one Planning Commissioner indicated that the swim center would generate three times the number of left turns at

Condit and Dunne than the traffic study indicates. The Planning Commissioner indicated that instead of going through Tennant, most of the traffic would go to Dunne and make left turns, increasing the traffic flow more than the current traffic study indicates. He indicated that this is one of 19 new planned uses in this small two block area and requested that the City conduct a comprehensive review and a comprehensive environmental impact traffic study for the entire area. He expressed concern with the aquatics center and questioned whether this was the right time to have a swim center with a \$1 million negative cash flow every year in a time when the City is trying to get sales tax revenues. He inquired whether the Ford dealership would fund the swim center or some part of it. He requested that the City decide what will be done with the Condit and Murphy area and how a four lane road can be kept away from Murphy, Nordstrom School, and the surrounding housing areas. If the traffic issues can be mitigated, he felt that the number of safety concerns heard earlier this evening would go away. Having a strip mall adjacent Nordstrom Park and the other planned uses would impact the area greatly. He recommended that construction of the swim center be postponed to a time when it can be afforded.

Michael Lawson indicated that residents requested that the Planning Commission take into consideration all of the development that is taking place in the area so that the total picture of traffic safety, noise, etc., can be evaluated. He recommended that the City take a look at the whole picture before moving forward. He expressed concern that money from the Ford dealership would be used to fund the aquatics center. He felt that the City would be taking money from one place to another while generating traffic, noise and pollution. He stated that he was not opposed to the project so much that he is against the development without a better plan. He requested that the notification requirements for these kinds of approval be increased beyond the 300 foot radius as development affects residents who reside further than 300 feet. He indicated that the minutes for the Planning Commission meeting were posted within three minutes before the actual hearing. Therefore, the residents did not have the opportunity to review the document and rebut some of the claims made by staff. The residents requested a continuance and the Planning Commission denied the request. He felt that the Planning Commission needs direction from the Council that makes them liable to the public.

Gino Acevedo indicated that he was speaking on behalf of the Morgan Hill Aquatics Center Foundation. He said that everyone has spent years in the development of the aquatics center plan. The Foundations looks forward to having a nice competitive and recreational facility, filling up local hotels and providing local residents a place to compete.

No further comments were offered.

Mayor Kennedy corrected a statement made by Mr. Burkhardt. He said that the City's budget calls for subsidizing the aquatics complex in the amount of \$200,000 in the first year and that this amount decreases in the second year to \$150,000. The City is also working with the Morgan Hill Aquatics Center Foundation in order to enter into a contract where they will subsidize the operation of the center during the winter months when it is most costly to operate. It is the City's goal to reach a point where the Council keeps the annual subsidy to an absolute minimum. He felt that the

City has the capability to operate the center only during the months that are profitable, should the City so choose. He indicated that the City has conducted marketability studies on the aquatics center and that the Council has looked at all the numbers and operating costs. Therefore, Council has a good handle as to what the aquatics center's potential costs would be.

Council Member Sellers said that the Council has spent a lot of time and will be spending more time in discussing the broader issues and the development of the entire area. He stated that the Council studied this area at a time when the Council originally looked into acquiring the soccer fields. He stated that the continued input is helpful regarding this entire region. He said that the City would look into the issue of the notification requirements. He said that City has a 300 foot notification requirement and felt that the Council may want to look at modifying this legal requirement on specific issues when it makes sense to do so. He said that the City is developing this pool project as well as industrial projects and that they will come on line at the time the economy starts to recover and that this is important to keep in mind. He said that the Council determines the appropriate level of services for the community. The Council looks at projects that do not require use of city funds but that there are some projects that require some City subsidy. The Council looked at other alternatives to try to figure out how to pay for services and that the Council will continue to review options. He stated that the amount of monies that the City uses from public funds is something that the City is trying to minimize and monitor as projects get underway. He appreciated the work of the committee members in figuring out the bid alternatives that would give the City the most flexibility to make sure that the project remains within budget.

Mayor Pro Tempore Chang felt that it would be a reasonable approach to proceed with the base bid. She noted that the total bid is estimated at \$2.1 million and that the project is at \$2.6 million. Therefore, the project is 24% higher than the original cost estimate. She inquired where the money would come from should the remainder of the bids come in higher than estimated.

Mayor Kennedy said that should the bid costs come in higher than estimated, it would be proposed to eliminate various features of the complex or to attain other sources of funds (e.g., donations, fund raising, etc.). He noted that staff has identified alternatives that can be eliminated, if necessary.

Council Member Carr concurred that what has gone out to bid and has been submitted thus far, the project is 17% over the estimate. He noted that staff indicates in its memo that should the City look at the most recent cost estimate at 50% construction documents, it is only 4% at this time. He said that in the rest of the bidding to go out for the entire project there are identified bid alternates of things that can be pulled out of the project. He said that staff tried to identify items that can be pulled out as packages onto themselves so that it does not affect the overall operations of the aquatics center.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Project Plans and Specifications.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Awarded** the Contract to California Commercial Pools in the Amount of \$58,000 for Phase 1 – Pool Shop Drawing Submittals Only.*

22. BURROWING OWL HABITAT MITIGATION PLAN

Assistant to the City Manager Eulo presented the staff report, indicating that staff is not recommending approval of the plan this evening. He requested that the Council provide its comments this evening, indicating that the plan would return to the Council for approval at a later date. He indicated that when the City adopts this plan, it will be a leader in owl protection.

Mayor Kennedy opened the floor to public comment.

Craig Breon, Executive Director of the Santa Clara Valley Audubon Society, stated that there were factual errors contained in the Hollister Pinnacles and that he had to correct the error. He said that the news article's tone was not the Audubon Society's current tone. This is a plan that is modest in its goal and that it does not significantly impinge on development in the area of Morgan Hill. He noted that this is the first plan of its kind in the state. This in of itself is worth trying, agreeing that there is no guarantees for success. He appreciated that in 1999, the City agreed to move forward with the plan. He recommended that the Council move forward with the various aspects of the Plan as it is a worthwhile effort.

No further comments were offered.

Council Member Sellers agreed that the City needs to make an effort to try and preserve what cannot be replaced. He inquired whether the Council was precluded from approving the plan this evening.

City Attorney Leichter said that the Council was not precluded from approving the Plan. She indicated that the settlement agreement contains language that states the Plan shall be approved at the same time that the disking ordinance is approved. Should Mr. Brian supports Council approval of the Plan this evening she did not believe that there was a problem with moving forward with the approval of the plan.

Mr. Breon stated that he did not have a problem with the City moving forward with the approval of the Plan as it takes time to put the disking ordinance together. He understands that there are details to be worked out with the disking ordinance.

Council Member Carr thanked all parties involved in the development of the Plan and that he was pleased that Morgan Hill will have the first modest plan that the State has seen. It was his hope that it becomes more than just a first modest Plan and that it would become a model used throughout the state.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Borrowing Owl Mitigation Plan.*

RECONVENE TO CLOSED SESSION

Mayor/Chairman Kennedy reconvened the meeting to Closed Session at 11:08 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 12:15 a.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

4. APPROVAL OF LEASE OF PERCHLORATE REMOVAL PLANT TO BE INSTALLED AT THE TENNANT WELL SITE

Action: ***No Action** taken on this item.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:16 a.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY